

Appeal from a decision of the Utah State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease offer U-57896.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in-Fact or Agents--Oil and Gas Leases: Applications: Drawings

Pursuant to 43 CFR 3112.6-1(b), the power of attorney authorizing an attorney-in-fact to sign lease offers submitted under the simultaneous filing procedures must prohibit the attorney-in-fact from filing offers on behalf of any other offeror. Where the power of attorney fails to include such a prohibition, the offer is properly rejected.

APPEARANCES: David R. Vandiver, Esq., Artesia, New Mexico, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Peggy A. Yates has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated October 30, 1985, rejecting her non- competitive oil and gas lease offer U-57896.

Yates' application to lease parcel UT 329 was drawn with first priority in the June 1985 simultaneous oil and gas lease drawing. By notice dated August 21, 1985, BLM transmitted the lease forms to Yates for signing in accordance with 43 CFR 3112.6-1. This notice informed Yates as follows:

An attorney-in-fact signing a lease offer on behalf of the prospective lessee shall file, together with the offer, a copy of his/her power of attorney, or where such power-of-attorney has previously been filed in a proper BLM office, a reference to the serial number of the record in which it has been filed, together with a statement that it is still valid, over the personal hand- written signature, in ink, of the prospective lessee. Evidence of the applicant's physical handicap which precludes an ability to sign may be submitted in lieu of the applicant's signature on the power of attorney.

On September 9, 1985, BLM received lease offer forms signed on behalf of Yates by Harvey S. Apple as her attorney-in-fact. Both Yates and her husband, John A. Yates, executed a power of attorney, dated March 15, 1976, constituting Harvey S. Apple their attorney-in-fact, with authority, inter alia, "to make, execute, acknowledge and deliver oil and gas leases * * *." BLM rejected Yates' offer in its entirety on the basis that "[t]he power of attorney * * * did not prohibit Mr. Apple from filing offers on behalf of any other participant as required in 43 CFR 3112.6-1(b)(1)(i)." That regulation provides that "[a]n attorney-in-fact may sign the lease offer only if * * * [t]he power of attorney prohibits the attorney-in-fact from filing offers on behalf of any other participant."

In her statement of reasons (SOR), Yates explains that Apple "did not execute any other oil and gas lease offers resulting from the June 1985 simultaneous oil and gas lease drawing on behalf of Peggy A. Yates or any other person" (SOR at 4). Yates argues that BLM's rejection of her offer "on the basis that the power of attorney did not contain specific language is arbitrary, capricious and not in accordance with law." Id. at 5. According to Yates, that Apple was attorney-in-fact for both she and her husband amounts to a "non-substantive error" which "may not be per se grounds for rejection of the offer, because 43 CFR | 3112.6-1(b)(1) does not materially advance the statutory purposes of the Mineral Leasing Act." Id. Yates emphasizes that "[t]he regulation was intended to curb abuses by filing services, and it is obvious from the face of the power of attorney in question that Harvey S. Apple was not acting as a filing service in the execution of the offer. Id.

Yates relies upon Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), in which the Tenth Circuit held that 43 CFR 3112.2-1(c) did not materially advance the purposes behind enactment of the Mineral Leasing Act of 1920, 30 U.S.C. | 181 (1982), and that "although the Secretary can require a signature date [pursuant to 43 CFR 3112.2-1(c)], he cannot make its absence a per se disqualification." 717 F.2d at 517. Yates argues that the following approach articulated by the Tenth Circuit in Conway v. Watt should apply in the attorney-in-fact context as well: "When a date inadvertently is omitted and if the Secretary is concerned that that omission is fraudulent, he may require an applicant to produce proof that his or her signature was made on a qualifying date and that all other qualifications were satisfied as of that date." 717 F.2d at 517. Thus, Yates contends that "[r]ejection of Yates' lease offer without requesting additional information despite the non-substantive nature of the error, is arbitrary, capricious and not in accordance with law" (SOR at 12).

In addition, Yates argues that 43 CFR 3112.6-1(b)(1) is ambiguous, insofar as the regulation "does not require that the power of attorney must prohibit the attorney-in-fact from signing offers, but that it must prohibit the attorney-in-fact from filing offers on behalf of any other participant" (SOR at 18-19). Yates argues as follows:

According to the express language of the regulation, an attorney-in-fact is authorized to sign the lease offer only if the power of attorney prohibits the attorney-in-fact from filing offers on

behalf of any other participant. 43 CFR | 1821.2-2(f) provides as follows:

Except when paragraph (c) of this section is applicable, filing is accomplished when a document is delivered to or received by the proper office. Depositing a document in the mails does not constitute filing.

Therefore, the explicit language of the attorney-in-fact regulation requires only that the attorney-in-fact be prohibited from delivering offers to the Bureau of Land Management on behalf of any other participant. Therefore, an attorney-in-fact may properly have the authority to sign lease offers on behalf of an unlimited number of participants in the simultaneous program, so long as the power of attorney prohibits the attorney-in-fact from filing (delivering) offers on behalf of more than one participant. [Emphasis in original].

(SOR at 18). Thus, according to Yates, the Board's statement in Kirk Rhone, 76 IBLA 332 (1983), that it can discern no ambiguity in the regulation is contrary to its "express language."

[1] In Kirk Rhone, *supra*, and in Amy Polak, 79 IBLA 391 (1984), the Board construed 43 CFR 3112.4-1(b) (1982), which was recodified at 43 CFR 3112.6-1 effective July 22, 1983. *See* 48 FR 33680. In each case, the attorney-in-fact held a power of attorney from, and had filed lease offers on behalf of, the husband and wife. In each case, the Board upheld BLM's rejection of the lease offer on the basis that the power of attorney failed to prohibit the attorney-in-fact from filing offers on behalf of any other participant, as required by 43 CFR 3112.4-1(b).

In Kirk Rhone, the Board explained the reason for the promulgation of the regulation:

Appellant is correct in his statement that the promulgation of 43 CFR 3112.4-1(a) and (b) was, in part, directed at abuses of "filing services." *See* 44 FR 56176 (Sept. 28, 1979). Thus, the Department noted that: "Some services have advanced the first year's rental and obtained leases which have then been assigned without their client's knowledge." *Id.* In order to "increase an applicant's involvement and reduce the influence of agents in the process," the Department provided in its proposed rulemaking that the lease offer be signed and the first year's rental be submitted by the lease applicant. 45 FR 35159 (May 23, 1980). However, in its final rulemaking, the Department changed the regulation to permit an attorney-in-fact to sign the offer and submit the first year's rental "if the requirements of the section [43 CFR 3112.4-1(b)] are followed." *Id.* This was done to provide "greater flexibility for the leasing system." *Id.* Accordingly, while an attorney-in-fact might act on behalf of a single offeror in these instances, the regulation was worded in such a way so as

to limit an attorney-in-fact to one participant in the simultaneous oil and gas leasing system, at any given time. This was intended to promote a more direct relationship between an offeror and his or her attorney-in-fact, and thereby involve an offeror more directly in the process. Moreover, it prevented filing services from acting as attorneys-in-fact on behalf of several participants in this manner and effectively precluded them from offering that service to their clients. This eliminated major areas of possible abuse.

76 IBLA at 333-34.

Moreover, in Amy Polak, the Board applied 43 CFR 3112.4-1(b) as follows:

The language of the regulation clearly prohibits an attorney-in-fact from executing a lease offer under the simultaneous filing procedures (43 CFR Subpart 3112) as an attorney-in-fact for one individual so long as he or she is authorized to file such offers as an attorney-in-fact for another individual. Indeed, the regulation specifically required the power of attorney to expressly prohibit the attorney-in-fact from filing offers on behalf of any other participant.

79 IBLA at 393. 1/

Yates distinguishes Kirk Rhone and Amy Polak on the basis that, in her case, the attorney-in-fact filed a lease offer only on her behalf, not on behalf of both she and her husband. Yates argues that the violation in her case "is a more technical matter involving the language of the power of attorney, whereas the violation in the Polak and Rhone cases concerned substantive acts which the regulation was designed to prevent" (SOR at 12). In such a case, Yates maintains, BLM should follow Conway v. Watt by requesting "additional information in order to verify the applicant's qualifications" thus avoiding "per se disqualification when the error is non-substantive" (SOR at 11).

We reject Yates' position. In our view, the violation of 43 CFR 3112.6-1(b) involved in this case is more analogous to the violation of 43 CFR 3112.2-4 considered in KVK Partnership v. Hodel, 759 F.2d 814 (10th Cir. 1985), than the date signature violation at issue in Conway v. Watt, supra. In KVK Partnership, KVK had left blank the line on the drawing entry card where its partnership serial number should have been written. BLM rejected KVK's application because it violated both the requirement that a showing of partnership qualifications accompany the application absent a reference in the application to the serial number

1/ We note that this decision was appealed as Amy and P. R. Polak v. Clark, Civ. No. 84-0192-K (D. Wyo. Jan. 2, 1985). The District Court reversed our ruling. However, on appeal to the Tenth Circuit, No. 85-1366, the matter was dismissed as moot, and on March 25, 1986, the District Court decision was vacated.

(43 CFR 3102.2-4 and 43 CFR 3102.2-1 (1981)), and the requirement that all partners sign the application absent a statement authorizing one partner to sign for the partnership (43 CFR 3102.2-4(a)(3)). KVK argued that its violations were "mere trivial technicalities," that the regulations at issue did not materially advance Congressional intent, and that BLM's rejection of its lease application was arbitrary and capricious, relying upon Conway v. Watt, *supra*.

In KVK Partnership, the Tenth Circuit agreed with BLM that it did "not abuse its discretion by disqualifying KVK because KVK had not complied with a requirement reasonably related to a legitimate goal." 759 F.2d at 816. We find that the purposes behind 43 CFR 3112.6-1(b) meet the following standard expressed in KVK Partnership:

Unlike the date in Conway which we determined to be unessential, the requirement that the validity of the application be facially established is a substantive condition necessary to satisfy legitimate government interests. We conclude that this requirement is reasonably related to a matter within the scope of the agency's authority, and that the BLM acted reasonably in rejecting KVK for its failure to comply.

759 F.2d at 817. See Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976) (BLM had not acted arbitrarily in rejecting a corporate first drawee who had failed to refer to its serial number on its drawing card).

The requirement of 43 CFR 3112.6-1(b)(1) that the power of attorney prohibit the attorney-in-fact from filing offers on behalf of any other participant is reasonably related to legitimate BLM objectives within the scope of its authority. Such a statement enables BLM to determine that the offeror is protected from being defrauded by an agent. See Amy Polak, *supra* at 392-93. Inclusion of a statement that the signatory is prohibited from filing offers on behalf of any other participant is a reasonable means by which BLM can ensure that the objective of the regulation is met. Cf. ANR Production Co. v. Watt, No. C83-375-K (D. Wyo. Jan. 11, 1984). ^{2/} The Board has recently affirmed that defects in oil and gas lease offers relating to powers-of-attorney are of substantial weight so as to require rejection. See Satellite 8211104, 89 IBLA 388 (1985), *aff'd sub nom* Satellite 8301123 v. Hodel, 648 F. Supp. 410, 414 (1986); Satellite 8307193, 85 IBLA 357 (1985).

^{2/} On Jan. 11, 1984, in ANR Production Co. v. Watt, Civ. No. C83-375-K (D. Wyo.), the Court entered judgment for ANR, and reversed this Board's decision in Liberty Petroleum Corp., *supra*. The Department appealed the District Court's decision to the Tenth Circuit Court of Appeals, but subsequently, on July 2 and Aug. 10, 1984, the appeals were withdrawn. The matter was ultimately disposed of in ANR Production Co., 82 IBLA 228 (1984).

As to Yates' arguments that BLM contributed to the situation, and that Yates was unaware of the content of the regulations, it is well established that all persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. || 1507, 1510 (1982); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Utah State Office is affirmed.

John H. Kelly
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Gail M. Frazier
Administrative Judge